

# Decision Notice



Decision 081/2012 Mr Brian Purdie and Inverclyde Council

Inverclyde Council Future Operating Model

Reference No: 201101940  
Decision Date: 3 May 2012

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## Summary

Mr Purdie requested from Inverclyde Council (the Council) information relating to the investigation by the Council into the implementation and management of its Future Operating Model. The Council responded, disclosing some of the requested information, but withholding other information on the basis that its disclosure would prejudice substantially the administration of justice and the Council's ability to ascertain whether circumstances exist which would justify regulatory action being taken, (sections 35(1)(c) and 35(1)(g) of the Freedom of Information (Scotland) Act 2002 (FOISA)). After seeking a review, Mr Purdie remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Council disclosed information to Mr Purdie which would address two of the three parts of his request, but continued to apply the exemptions in section 35 of FOISA to some of the information which would address part (a) of the request. This decision considers only the information that continued to be withheld by the Council.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Mr Purdie's request for information in accordance with Part 1 of FOISA. By relying on the exemption in section 35(1)(c) of FOISA for withholding most of the information under consideration in this decision, the Council complied with Part 1 of FOISA. However, the Commissioner found that certain information which had been withheld within two emails was not exempt from disclosure under either section 35(1)(c) or section 35(1)(g) (read in conjunction with section 35(2)(c)) of FOISA. The Commissioner required the Council to disclose this information.

In addition, the Commissioner found that, in failing to respond to Mr Purdie's request for information within 20 working days, the Council failed to comply with section 10(1) of FOISA.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) Effect of exemptions); 10(1) (Time for compliance); 35(1)(c) and (g) and (2)(c) (Law enforcement)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.



## Background

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1. In 2008, the Council embarked on the development and implementation of a Future Operating Model (FOM), the purpose of which was to achieve efficiency savings within the Council of around £1.9 million. However, in December 2010, the project was suspended as a consequence of concerns that had been raised regarding the delivery of the project. Following the suspension of the project, four members of staff were suspended while the Council undertook an investigation into the problems with the delivery of the FOM. This investigation led to disciplinary proceedings being raised against the suspended staff.
2. Mr Purdie has been in correspondence with the Council regarding its FOM, and the failure of that project to proceed according to plan. As part of ongoing correspondence, on 22 June 2011, Mr Purdie emailed the Council, and, amongst other comments, questions and requests, he requested the following information:
  - a. A copy of all e-mails that had been exchanged between officers of the Council on the subject of Mr Purdie's (previous) request for information about the FOM since he first wrote to a named member of staff.
  - b. Who took the decision (and why) for a written report to be submitted to officers while only a verbal report was considered appropriate for elected members.
  - c. Who was commissioned to carry out the investigation and whether a copy of the report on findings will be made available to Council taxpayers.
3. The Council responded to these requests on 16 August 2011, disclosing a number of documents containing information addressing part (a) of Mr Purdie's request. Among these, four documents were disclosed subject to the redaction of certain information that the Council considered to be exempt under sections 35(1)(c) (on the basis that disclosure would, or would be likely to, prejudice substantially the administration of justice) and section 35(1)(g), read in conjunction with section 35(2)(c), of FOISA (on the basis that disclosure would, or would be likely to, prejudice substantially the exercise by a Scottish public authority of its functions to ascertain whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise). The Council explained that these exemptions applied because the information related to an ongoing investigation. The Council withheld information that would address parts (b) and (c) of Mr Purdie's request on the same grounds.
4. On 8 September 2011, Mr Purdie wrote to the Council requesting a review of its decision to withhold some of the requested information. He highlighted in particular that the Council's response had not been issued within the timescale laid down in FOISA, and commented that his understanding was that the investigation being carried out by the Council had been completed; as such, he did not accept that the investigation could be said to be ongoing. Mr Purdie requested that if the Council did maintain that the investigation is ongoing, it advise him of the elements of the case that were still being investigated and when the investigation would be completed.



5. The Council notified Mr Purdie of the outcome of its review on 27 September 2011. The Council apologised for failing to provide Mr Purdie with a refusal notice within the timescale set out in FOISA, but upheld its application of the exemptions in section 35(1)(c) and 35(1)(g) (read in conjunction with section 35(2)(c)) of FOISA to the withheld information.
6. In its response to Mr Purdie's request for review, the Council also outlined the elements of the investigative process that were still ongoing, and commented that it was unable to give a definitive date as to when these would be concluded. The Council also advised that, where there is an on-going process, it could not see how the matter could be regarded as being completed. Furthermore, as the employees concerned still had recourse to an Employment Tribunal or Court, the Council advised that it could not countenance the release of information that would be likely to prejudice the case of the parties involved, should the matter be subject to further judicial process.
7. On 16 October 2011, Mr Purdie wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr Purdie had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

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9. On 20 October 2011, the Council was notified in writing that an application had been received from Mr Purdie and was asked to provide the Commissioner with the information withheld from him. The Council responded with the information requested and the case was then allocated to an investigating officer.
10. The investigating officer subsequently contacted the Council on 9 November 2011, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested, with particular reference to section 35(1)(c) and section 35(1)(g) (read in conjunction with section 35(2)(c)) of FOISA.
11. The investigating officer also highlighted that the information provided to the Commissioner identified as that withheld appeared to relate only to part (a) of Mr Purdie's request. The Council was asked to confirm whether relevant information was held which would address parts (b) and (c), and if it was also considered exempt from disclosure. She also requested a copy of an email that was referred to within the withheld information, but which had not been supplied.



12. The Council was also asked to comment on why it failed to provide Mr Purdie with a refusal notice within the 20 working day timescale set down in FOISA.
13. In its response, the Council stated that it did not hold any recorded information which would address part (b) of Mr Purdie's request (which asked who had taken a decision to make a verbal report to Councillors, but a written report to officials, and why), though it considered that it had already answered this question in response to a previous request from Mr Purdie.
14. The Council provided the Commissioner with the information which would address part (c) of Mr Purdie's request. The Council also provided the Commissioner with a copy of the email that had been missing from the withheld information that had been provided previously. It also advised that it had no difficulty in providing this email to Mr Purdie as the content had been set out as part of another document that had already been disclosed to him.
15. Submissions were also provided by the Council to justify its reliance on the exemptions in sections 35(1)(c) and 35(1)(g) (read in conjunction with 35(2)(c)) of FOISA for information which would address part (a) of Mr Purdie's request. An explanation was also given by the Council as to why it had been unable to provide a response to Mr Purdie's request within 20 working days.
16. Further submissions were sought from the Council during the course of the investigation regarding its contention that it did not hold any information which would address part (b) of Mr Purdie's request, and whether it was willing to release the information it held which would address part (c) of Mr Purdie's request. The investigating officer also asked the Council to disclose the email referred to in paragraph 14 above.
17. In its further response, the Council indicated that it was willing to release information to Mr Purdie which would address, in full, parts (b) and (c) of his request. The Council also referred to a detailed report which had been submitted to a meeting of the full Council on 15 December 2011, and which had been published. This document set out details of a review into the FOM, and contained information relevant to Mr Purdie's request.
18. During the course of the investigation, the Council disclosed to Mr Purdie the information contained in the email and also the information it held which would address, in full, parts (b) and (c) of his request. Mr Purdie confirmed that he had received this information and was satisfied that it fulfilled these parts of his request. As a consequence, the Commissioner will not consider these parts of Mr Purdie's request further in this decision.
19. The focus of the decision will therefore be on the withheld information which addresses part (a) of Mr Purdie's request.
20. During the course of the investigation, submissions were sought, and received, from Mr Purdie, on why he considered that the public interest lay in release of the information covered by part (a) of his request.
21. The relevant submissions received from both the Council and Mr Purdie will be considered fully in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

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22. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Mr Purdie and the Council and is satisfied that no matter of relevance has been overlooked.

### **Section 35(1)(c) Substantial prejudice to administration of justice**

23. Under section 35(1)(c), information is exempt information if its disclosure would, or would be likely to, prejudice substantially the administration of justice. The term "administration of justice" is not defined in FOISA, but the Commissioner considers that it refers widely to matters relating to the working of the courts and of tribunals. Examples might include principles such as the right to a fair trial and ensuring that individuals have access to justice.
24. This exemption is subject to the public interest test required by section 2(1)(b) of FOISA.
25. The Council applied this exemption to all of the remaining withheld information. This includes information that has been redacted within four disclosed emails, together all information contained in two documents regarding the FOM, which had been attached to one of those emails.
26. The Council submitted that there was an ongoing disciplinary process involving certain Council officers. The Council explained that those officers were going through the appeals process, and that, after the appeals process within the Council was complete, the Council officers would have the right to raise matters before an Employment Tribunal if they were dissatisfied with the outcome. It was the Council's submission that the withheld information formed part of this ongoing legal process, and that the documents take the form of legal advice in respect of that process, sensitive personal data in respect of the appellants and documents that parties would rely on in the likelihood that the matter proceeds to further judicial examination.
27. In seeking to justify why it considered that the information withheld in this case is exempt, the Council gave specific submissions for each of the pieces of withheld information, which set out why it considered that disclosure would prejudice substantially the administration of justice.
28. Having considered all of the Council's submissions, together with the content of the withheld information, the Commissioner accepts that the information in the two documents withheld in their entirety, and most of the information that was redacted within the emails is exempt from disclosure under section 35(1)(c) of FOISA, on the basis that its disclosure would, or would be likely to, prejudice substantially the administration of justice.



29. In reaching this conclusion, the Commissioner recognises that, at the time of Mr Purdie's request for review, there was an ongoing disciplinary process within the Council, and the withheld information formed part of the evidence and information that was being considered as part of that process. It is also clear to the Commissioner, from reading the submissions from the Council together with a report that was placed in the public domain by the Council (which Mr Purdie has a copy of), that the Council officers subject to the disciplinary process still have further recourse open to them should they wish to take the matter to a Tribunal. As a consequence of this, the Commissioner is satisfied that if this information, which has a direct bearing on the disciplinary process, were to be released to Mr Purdie, it would, or would be likely to, prejudice substantially the Council's and the appellants' cases whilst further options remain.
30. However, the Commissioner is not satisfied that certain information redacted within two of the emails was exempt under section 35(1)(c) of FOISA. The Commissioner does not accept that, at the relevant time, disclosure of the information redacted at point 3 in an email dated 19 May 2011 at 15:33hrs or under point 3 in the attachment to an email dated 19 May 2011 at 14:22hrs would, or would have been likely to, prejudice substantially the administration of justice.
31. Having read this information, which relates to why members of the Council were provided with only an oral report on developments with the FOM project while the Corporate Management Team was able to consider a written report, the Commissioner cannot see how the withheld information would have any bearing or influence on the disciplinary process that was ongoing at the time of Mr Purdie's request and requirement for review, or why release of this particular information would prejudice substantially the administration of justice.
32. Given that the Commissioner has found that the exemption does not apply to this information, she is not required to go on to consider the application of the public interest test in relation to that information. As the Council has also applied the exemption in section 35(1)(g) read in conjunction with section 35(2)(c) to this information, she will consider that exemption later in this decision.
33. However, as the Commissioner is satisfied that the rest of the withheld information was exempt under section 35(1)(c) of FOISA, she will now consider the application of the public interest test in section 2(1)(b) of FOISA to that information.

#### *Public interest test*

34. The Council acknowledged that the withheld information may be of interest to Mr Purdie, but argued that it is not in the public interest that confidential legal papers should be provided to the public in response to a FOISA request.
35. The Council submitted that the public interest lay in maintaining the exemption, given that release of the withheld information into the public domain was likely to prejudice legal proceedings. This, the Council argued, would go against all jurisprudence, common law and rules of court.



36. The Council also explained that the documents produced by Council officers are very much part of the investigation/process that is currently ongoing. It is the Council's view that any or all of these papers can and will make up part of the ongoing legal process together with any anticipated future processes. By providing these papers to the public, the Council would, it submitted, be putting in jeopardy the confidential nature of these papers and their importance to ongoing legal processes.
37. In his submissions, Mr Purdie commented on the coverage that has appeared in the national press regarding the failure of the FOM to achieve the £1.9 million savings that had been expected. He also expressed his concern that Council Tax payers in Inverclyde were only being informed of the serious issues that were emerging at the Council from media reports.
38. Whilst Mr Purdie acknowledged that the Council had made certain information available on its website, he considered that the Council's decision to put a report from the Chief Executive to Elected Members on a "less than obvious" part of the website was not a serious attempt by the Council to inform the public of the problems that had beset the Council. Furthermore, he considered that, despite Councillors making statements in the press regarding the damage that has been done to the Council as a consequence of the FOM project, a topic of this much importance had not, to his knowledge, merited a mention in the 'news' section of the Council website, which is, Mr Purdie commented, more accessible than that which relates to Council or Committee agendas.
39. Mr Purdie also referred to statements which were made by the Scottish Public Services Ombudsman (SPSO) in the introduction to his 2010/11 Annual Report, where he said, that "he had detected in a range of public bodies an unhealthy culture around ownership and a lack of customer focus in public services". Mr Purdie indicated that the SPSO also said that "some organisations appear to have lost sight of the basic fact that public services are the people's services and that providers exist to deliver these on behalf of the public. The public are more than just customers of public authorities, they are owners, shareholders and stakeholders rolled into one".
40. Mr Purdie commented that the Council has not treated him like an owner, shareholder and stakeholder, and that the release of the background information he has requested would assist in understanding more fully how the Council found itself in the position it did regarding the FOM, and why it took so long for the matter to be concluded at considerable cost, and why the Council seemed to have gone to such lengths to avoid providing a Council Tax payer with information about the workings of his Council.
41. The Commissioner has considered the submissions from both Mr Purdie and the Council regarding the public interest arguments in relation to the information that was redacted from the emails that were released to Mr Purdie, and the two documents relating to the FOM which were withheld from him in full.





42. Having taken into account both the submissions from Mr Purdie, along with background information about the Council's FOM, the Commissioner recognises that the matter of the FOM is one which has ignited debate and raised widespread public interest, not just with Council Tax payers in Inverclyde, in relation to why it did not work as it should, and why the anticipated efficiency savings were not achieved. There is also public interest surrounding the suspension of certain staff.
43. The Commissioner also accepts that it is in the public interest to allow better public understanding of how the problems with the FOM occurred and why, particularly as the project has been paid for from the public purse, and was concerned with generating efficiency savings in the Council. The Commissioner recognises there is a significant public interest in ensuring transparency and accountability in public authorities' use of public funds.
44. However, the Commissioner has to weigh this public interest favouring disclosure against that favouring the maintenance of the exemption in section 35(1)(g).
45. The Commissioner accepts that, where there is an ongoing legal process (as in this case) for which the withheld information forms part of a party's submissions, there is a significant public interest in ensuring that legal proceedings are not prejudiced by the disclosure of evidence into the public domain. The Commissioner recognises that the information found to be exempt under section 35(1)(c) is information that relates directly to ongoing disciplinary matters, and therefore reveals details of the case which may be used by either the Council or the relevant staff, either in the current proceedings or any future ones.
46. On balance, having weighed up the arguments advanced by Mr Purdie and the Council, the Commissioner finds that the public interest in maintaining the exemption in section 35(1)(c) of FOISA was not, at the time when the Council notified Mr Purdie of the outcome of its review, outweighed by the public interest in disclosure of the withheld information.
47. Therefore the Commissioner finds that the Council acted correctly in relying on the exemption in section 35(1)(c) of FOISA when withholding all of the information under consideration in this decision, apart from that recorded at point 3 in an email dated 19 May 2011 at 15:33hrs and information recorded under point 3 in the attachment to an email dated 19 May 2011 at 14:22hrs.

### **Section 35(1)(g) – Law enforcement**

48. Section 35(1)(g) exempts information if its disclosure would, or would be likely to, prejudice substantially the ability of a Scottish public authority (or of a public authority which is subject to the Freedom of Information Act 2000) to carry out its functions for any of the purposes mentioned in section 35(2). This exemption is subject to the public interest test in section 2(1)(b) of FOISA.



49. The Council argued that its own functions would, or would be likely to be, prejudiced substantially, were the withheld information to be disclosed. However, as the Commissioner has found that most of the withheld information had been properly withheld under section 35(1)(c) of FOISA, she has only considered the application of section 35(1)(g) in relation to the information withheld at point 3 in an email dated 19 May 2011 at 15:33hrs and information recorded under point 3 in the attachment to an email dated 19 May 2011 at 14:22hrs.
50. The Commissioner must consider three fundamental points when considering whether this exemption in section 35(1) applies:
- Does the Council have a function in relation to one or more of the purposes listed in section 35(2)?
  - If so, would disclosure of the information prejudice substantially, or be likely to prejudice substantially, the Council's ability to carry out one or more of these functions?
  - Even if this is the case, is the public interest in maintaining the exemption outweighed by the public interest in disclosure of the information?

*The Council's statutory functions*

51. The investigating officer, in a letter dated 9 November 2011, asked the Council, where it was relying on section 35(1)(g) of FOISA, to provide evidence that it has one or more of the functions in section 35(2) and to provide full details of what it considers to be the relevant purposes under section 35(2).
52. In response, the Council submitted that disclosure of the withheld information would substantially prejudice its ability to ascertain whether circumstances may exist, or arise, which would justify regulatory action in pursuance of any enactment, as per section 35(2)(c) of FOISA.
53. The Council explained that it, as with any other Council, is tasked with ensuring that Council Officers provide best value to the tax payer, and all Council Officers must also act in accordance with all criminal and civil laws pertaining to the office they hold. The Council argued that it is a fundamental requirement that it ensures that there is a process for disciplining and, if appropriate, punishing those who fail to abide by these basic tenets. The Council advised that it must have in place a disciplinary process that is clearly enshrined in numerous employment statutes in the UK, regulations under EU law and enshrined in the European Convention on Human Rights.
54. The Council added that the requirement for Council Officers to act appropriately is also further enshrined in common law, criminal law, jurisprudence, the rules of court and international law,.
55. In providing this submission, the Council has not identified to the Commissioner which particular UK employment statutes, regulations under EU law or parts of the European Convention on Human Rights specifically give it the statutory function described under section 35(2)(c) of FOISA.



56. As noted in *decision 045/2011 Mr Christopher Johnstone and Fife NHS Board*, while the Commissioner accepts that the Council, like any other employer, has, e.g., a duty to ensure that there is no improper conduct or failure to comply with the law amongst its employees, she does not accept that a reference to legislation from both the UK and the EU, together with a general reference to the rules of court, common law and international law is sufficient for the Council to evidence that it has these statutory functions. In the Commissioner's view, a function, for the purposes of section 35(1)(g), must be designed to fulfil one of the purposes specified in section 35(2); would likely, in the case of a body such as the Council, be imposed by statute; and must be specifically entrusted to the public authority to fulfil, as opposed to being a general duty imposed on all public authorities.
57. As a result, the Commissioner is not satisfied that the Council has evidenced that it has a function, in terms of section 35(1)(g) in relation to part (c) of section 35(2).
58. However, even if the Council were able to demonstrate that the wide variety of statutes, legislation, rules and law that it has referred to imposes these specific functions on it, the Commissioner does not accept that the Council has shown that disclosure of the withheld information would, or would be likely to, prejudice substantially its exercise of the function in question.

*Substantial prejudice to this function*

59. As noted above, the exemption in section 35(1)(g) can only apply where disclosure would, or would be likely to, prejudice substantially the exercise by the Council of its functions under section 35(2). The investigating officer asked the Council to evidence how these functions would, or would be likely to be, prejudiced substantially.
60. In response, the Council advised that release to a third party of the withheld information, which relates directly to ongoing legal processes, would infringe the appellants' and the Council's right to a fair and proper recourse in law.
61. In considering whether substantial prejudice would, or would be likely to, be caused to the function in question (if the Council has this function), the Commissioner has considered the content of the withheld information, which is information recorded at part 3 in an email dated 19 May 2011 at 15:33hrs and information recorded under point 3 in the attachment to an email dated 19 May 2011 at 14:22hrs, and the arguments put forward by the Council. In doing so, she has come to the conclusion that such substantial prejudice would not be likely to occur.
62. The Commissioner has reached this conclusion as the withheld information under consideration does not contain anything which relates to the ongoing legal process, nor does it contain, or reveal any information as to, the appellants' or Council's position with regard to the legal process. For these reasons, the Commissioner cannot accept that substantial prejudice would occur.
63. As a consequence, the Commissioner is satisfied that the exemption in section 35(1)(g) (as read with section 35(2)(c)) of FOISA does not apply to the information. She is therefore not required to go on to consider the public interest test set down in section 2(1)(b) of FOISA.



### Section 10(1) Time for compliance

64. In his application to the Commissioner, Mr Purdie expressed dissatisfaction that the Council had not provided a response to his request within 20 working days.
65. When invited to comment on this during the investigation, the Council advised that, in its response to Mr Purdie's requirement for review, it had accepted that it had failed to respond to Mr Purdie within the 20 working day timescale laid down in FOISA. The Council explained that the response to Mr Purdie's request was late was as a consequence of a misunderstanding, whereby one member of staff was of the view that approval was awaited from the Chief Executive to the response that had been prepared to Mr Purdie's request. However, the Chief Executive believed that they had already given approval and that the response had been sent out.
66. The Council submitted that this was a simple misunderstanding rather than any contrived attempt to withhold any information unnecessarily.
67. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
68. As can be seen from the background section, Mr Purdie submitted his request to the Council on 22 June 2011, but did not receive a response until 16 August 2011.
69. While the Commissioner acknowledges that the Council's failure to respond to Mr Purdie's request within 20 working days was as a consequence of a misunderstanding, she finds that the Council breached section 10(1) of FOISA in not responding to Mr Purdie's request within 20 working days.
70. Given that a response was provided, albeit outside the statutory timescale, the Commissioner does not require the Council to take any action in respect of this breach in response to this decision.



## DECISION

In relation to the matters considered in this decision, the Commissioner finds that Inverclyde Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Purdie.

The Commissioner finds that, by relying on the exemption in section 35(1)(c) of FOISA when withholding some of the information addressing part (a) of Mr Purdie's request, the Council complied with Part 1.

However, the Commissioner is not satisfied that the information withheld at point 3 of the email dated 19 May 2011 at 15.33hrs, and the information withheld under point 3 in the attachment to the email dated 19 May 2011 at 14.22hrs, is exempt from disclosure under either the exemption in section 35(1)(c) or that in section 35(1)(g) (read in conjunction with 35(2)(c)) of FOISA. By failing to disclose this information, the Council breached Part 1 and section 1(1) of FOISA.

The Commissioner therefore requires the Council to disclose to Mr Purdie the information noted in the preceding paragraph by 18 June 2012.

The Commissioner also found that, in failing to respond to Mr Purdie's request for information within 20 working days, the Council failed to comply with section 10(1) of FOISA. However, she does not require the Council to take any action in respect of this breach.

## Appeal

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Should either Mr Purdie or Inverclyde Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

**Margaret Keyse**  
**Head of Enforcement**  
**3 May 2012**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...



## 35 Law Enforcement

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially –
- ...
- (c) the administration of justice;
- ...
- (g) the exercise by any public authority (within the meaning of the Freedom of Information Act 2000 (c.36)) or Scottish public authority of its functions for any of the purposes mentioned in subsection (2);
- ...
- (2) The purposes are –
- ...
- (c) to ascertain whether circumstances exist which would justify regulatory action in pursuance of any enactment exist or may arise;
- ...